HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPEAL NO. 201 OF 2001.

Dashrath Genu Pawar,
Age: 46 years, Occu: Labourer,
R/at: Vijay Prabha Society,
Nehrunagar, Pimpri,
Pune-18. ..Appellant.

Versus.

State of Maharashtra
(Through Pimpri Police Station). ..Respondent.

Shri. Kuldeep Patil, Advocate appointed for the Appellant.

Smt. V. R. Bhosale, A.P.P. for the respondent- State.

CORAM: S.B.MHASE &
S.R.SATHE, JJ.

DATE: October 19, 2005.

P.C.

1. This appeal is directed against the judgment and order of conviction passed in Sessions Case No. 218 of 2000, passed by the 4th Additional Sessions Judge, Pune on 20th February 2001, holding the appellant - accused guilty of the offence punishable under section 302 of the Indian Penal Code, 1908 (hereinafter, in short, referred to as "the IPC".) and sentencing him to suffer rigorous imprisonment for life and pay fine of Rs.1,000/-, in default, to suffer simple imprisonment for one month.

2. The appellant was charged under Sections 302 and 498-A of the IPC, however, the 4th Additional Sessions Judge has recorded a finding of not found guilty in respect of the offence punishable under section 498-A of the IPC and has recorded a finding that the accused is guilty of the offence punishable under section 302 of IPC.

3. The incidence in question is dated 11th February 2000 and has taken place at the residence of the appellant and deceased, located at Nehrunagar, Pimpri, District: Pune. The incidence has taken place in between 2.15 p.m. to 2.30 p.m.. Deceased - Shila Pawar was the wife of the accused. The accused and deceased were married for twenty years. The accused and deceased were not having any issue out of their wedlock and they had taken a son in adoption. According to the prosecution, on the above referred day, date, time and place there was quarrel in between the accused and deceased - Shila Pawar, wherein the accused took kerosene from the stove in a pot and poured it on her person and set her on fire, as a result of which she sustained burn injuries upto 85%. P.W.-5 Shakuntala having found the deceased on fire, had put a quilt on her body.

The relatives of the deceased and accused admitted her in the hospital, however, she succumbed to the burn injuries on 18.2.2000, i.e., after a period of 6 days of the incidence.

. Immediately after the incidence the Dying Declarations were recorded. The crime was registered on the basis of Exhibit-16 (Dying Declaration) which was recorded by the Police Constable in the presence of Doctor Shri. Kiran S. Patil (P.W.-2). Initially, the crime was registered under section 307 read with section 498-A of IPC. However, after the death of Shila Pawar, Section 302 was added.

4. Deceased Shila Pawar died due to 85% burn injuries, as reflected in the PM Report, Exhibit-30, which is admitted by the accused. The question only remains as to whether the death was homicidal or suicidal. However, it is nobody’s case that the deceased has committed suicide. On the contrary, the fact is that the deceased and accused were married for 20 years and they had also adopted a son. Therefore, we find that not only the finding recorded by the trial court acquitting the accused for the offence punishable under section 498-A of

IPC is proper one but that the theory of the suicidal death is also ruled out.

5. The prosecution has examined P.W.5, Shakuntala, the eye-witness. The prosecution has also examined P.W.-4 Prabhakar Bhagat, the Taluka Executive Magistrate, who has recorded the Dying Declaration, Exhibit-18. P.W.-3 Dr. Pradipraj Rustogi has been examined to prove the endorsement on the said Dying Declaration. In view of the Exhibit-16, Dying Declaration recorded by the police constable, it is clear that the said Dying Declaration is recorded in the presence of P.W.-2 who made an endorsement on the said Dying Declaration.

6. So far as P.W.5 is concerned, P.W.5 has reached on the spot immediately after the incidence, and claims that she has extinguished the fire on the person of the deceased. It appears from the testimony of this witness that when the deceased was asked as to how she suffered the burn injuries, whereupon the deceased has replied that it was the accused who set her on fire by taking kerosene from the stove and by pouring it on her person. However, this witness has not fully supported the case of

prosecution, and was declared hostile. In the cross examination, however, it has transpired that this witness has admitted that immediately after the incidence, P.W.-5 had been to the hospital to meet Shila, and that Shila told her that the kerosene was poured on her person and she was set on fire. Thus, it transpires from her statement in the cross examination carried out by the prosecution that she admitted that the deceased was set on fire by pouring kerosene. The only omission, thus, is as to who had set her on fire. This evidence is not challenged in the cross examination by the accused. However, the Investigation Officer has stated that the statement of P.W.5 was recorded as per her Say. Suffice it to say at this stage that this witness has supported the prosecution to the effect that the deceased suffered the burn injuries as a result of the kerosene being poured on her person. The only omission which is required to be filled in is as who is responsible for pouring kerosene. To answer this question, we have two substantive pieces evidence on record, namely, Dying Declaration, Exhibit-16 which was immediately recorded by the Police Constable when the deceased was admitted in the hospital. No doubt, the Police Constable who recorded the said statement has not been examined by the Prosecution,

however, P.W.2 Doctor Kiran S. Patil, in whose presence the said Dying Declaration was recorded, has been examined. It appears from the testimony of P.W.2 that Exhibit-16 was recorded in his presence by the police constable after having ascertained that the patient was in fit condition to make a statement and that the deceased put her thumb impression on it. Therefore, this witness is equally an eye-witness in whose presence the Dying Declaration is made. Therefore, he can also prove the Dying Declaration and that the prosecution has rightly proved the Dying Declaration (Exhibit-16) which shows that on the fateful day, there was a quarrel between the accused and his deceased wife-Shila at about 2.15 p.m. and in the said quarrel, ultimately, the appellant poured kerosene on the person of the deceased and then set her on fire and ran away from the said place. P.W.-5 has extinguished the said fire. There is another Dying Declaration which has been duly proved, which is at Exhibit-18. The said Dying Declaration has been recorded by P.W.4 - Taluka Executive Magistrate. At the time of recording the said Dying Declaration, P.W.3 Dr. Pradipraj Rustogi was present and he has also made an endorsement that the patient was in a fit condition to make a statement. This Dying

Declaration was recorded on 12.2.2000, i.e., immediately after Exhibit-16 was recorded. An attempt has been made to show that the patient was not in a position to make a statement. However, Doctors have stated that the sedative drugs were not given to the deceased. Thus, what we find that nothing has been pointed out in the cross-examination to disbelieve these Dying Declarations. The learned counsel for the appellant made a submission in respect of the first Dying Declaration that the contents of the said Dying Declaration cannot be read in evidence. However, such a submission cannot be developed as against the second Dying Declaration. What we find is that taking the evidence in totality, it inspires confidence to infer that it is the accused who poured kerosene on the person of deceased and set her on fire. We find that the trial court has dealt with the case properly and has recorded a just and proper finding in respect of the guilt of the accused. We find that there is no substance in the appeal. The appeal is hereby dismissed.

7. The fees of appointed Advocate Shri. Kuldeep Patil are quantified at Rs.1,000/- (Rs. One Thousand only).

(S.R.SATHE,J.) (S.B.MHASE, J.)